IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 21184 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MUKESH B RAWAL - Petitioner(s)
Versus
RAMSHANKAR RAMAVADH TRIVEDI & 1 - Respondent(s)

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Appearance :

MR SURESH M SHAH for Petitioner(s) : 1,
MR DAXESH T DAVE for Respondent(s) : 1,
MR BJ TRIVEDI for Respondent(s) : 1,
MR JT TRIVEDI for Respondent(s) : 1,
SERVED BY AFFIX.-(R) for Respondent(s) : 2,
MR MAHESH R SHAH for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 22/03/2007

ORAL JUDGMENT

The petitioner herein has challenged the order

dated 14.6.99 passed by the Bench of two learned Judges of the Small Causes Court in Appeal From Order No.34/98.

2. Shortly stated, facts leading to the petition are that the petitioner as well as respondent herein claimed tenancy rights over a pan-shop situated in Paldi area of the city of Ahmedabad. The case of the petitioner is that he had rented the premises from respondent No.1 who was the Manager of the property and was managing the same for and on behalf of respondent No.2, owner thereof. On the other hand, case of respondent No.1 is that he is the tenant and while running the pan shop in the said premises, he had engaged the petitioner as a servant.

Apprehending forceful eviction from the suit premises, the petitioner filed HRP Suit No.460/97 seeking permanent injunction against forcible eviction. He also filed interim injunction application Ex.4 seeking interim protection against eviction. The learned Trial Judge allowed the application by an order dated 24th February 19998.

Respondent No.1 herein filed Appeal From Order No.34/98 against the order passed by the learned Trial Judge. The appellate Bench of the Small Causes Court allowed the Appeal From Order and set aside the order passed by the learned Trial Judge. In doing so, the Bench was of the opinion that

though the petitioner herein is in possession of the suit premises, it is not clear whether he is in such possession as a sub-tenant or as a servant. The Bench was clearly of the opinion that the petitioner does not enjoy the possession of the suit property as a tenant. By the impugned judgment, it was, therefore, held that such possession cannot be protected. It was also held that whether the possession was in the capacity of a servant or sub-tenant is a debatable question which cannot be resolved without adducing sufficient evidence by both sides. On this ground, the Bench was pleased to allow the Appeal From Order which prompted the petitioner to file the present petition.

3. Having heard the learned advocates appearing for the parties, I find that before the courts below both sides had led documentary evidence to show that each side is in actual possession of the suit premises. There were electricity bills, receipts and notice received from municipal authorities and authorities under the Shops and Establishments Act evidencing possession of either the petitioner herein or respondent No.1. However, the Appellate Court had come to a factual finding that the petitioner is in possession of the suit premises. The Appellate Court, however, refused to protect such possession upon its conclusion that such possession is not in capacity of a tenant, but the same is either in the capacity of a sub-tenant or a servant of respondent No.1 herein.

4. Be that as it may, once the Appellate Court concurred with the learned Trial Judge that the petitioner was in actual possession of the property in question, it was thereafter necessary to examine whether such possession was required to be protected during the pendency of the proceedings or that the petitioner was liable to be summarily evicted. The case of the petitioner has all throughout been that he was the tenant of the said premises and such tenancy he derived from respondent No.1 who was managing the property in question. In that view of the matter, without at least prima facie answering this issue, it was not open for the Appellate Court to permit summary eviction of the petitioner from the suit premises, which possession he enjoyed since long period of time. Only on this ground, I am inclined to allow this petition.

5. Needless to state that the observations made by the courts below as well as those made by me in this judgment are purely of prima facie nature and are made at an interlocutory stage and would not harm or prejudice either side while the Trial Court takes up final adjudication of the suit. Since sufficient time has been consumed in deciding whether the possession of the petitioner should be protected during the pendency of the suit, it would be desirable that the suit be expedited and be concluded expeditiously.

6. Under the circumstances, by allowing this petition, the impugned order dated 14.6.99 passed by the Appellate Court is set aside. The order of the learned Trial Court is restored. Simultaneously, learned Trial Court is also requested to give priority consideration to the pending suit and to endeavour to dispose of the same as expeditiously as possible and preferably within six months from the date of receipt of a copy of this order.

7. With the above directions, the petition is allowed as aforesaid. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)

(vjn)